IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 443 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVRAMBHAI VASHRAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR VIPUL S MODI for applicants

MR KG SHETH, APP for opponent No. 1

MR JAN UNWALA for MR PK JANI for original complainant

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/01/2000

ORAL JUDGEMENT

Present applicants-original accused Nos.1, 2 and 3 of Sessions Case No.57 of 1996 have filed the present Criminal Revision Application challenging the order dated

15-6-1999 passed by the learned Special Judge (Atrocities) and Additional Sessions judge, Banaskantha at Palanpur whereby he has framed charge against the present applicants-original accused under Secs.302, 325, 326, 323, 441, 447, 504, 506(2) of Indian Penal Code and Sec.135 of B.P.Act and also under Secs.3.1(iv)(v)(x) and 3.2(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. I have heard learned counsel for the applicants, Mr.Vipul Modi and learned Addl. Public Prosecutor for the opponent-State Mr. K.G.Sheth. I have also heard learned counsel for the original complainant, Mr.Unwala for Mr.P.K.Jani who has filed the Vakalatnama well in time in this proceeding.

3. Learned counsel for the applicants has not pressed for the charge framed under Secs.302, 325, 326, 323, 441, 447, 504, 506(2) of Indian Penal Code and Sec.135 of B.P. Act, but he has restricted his arguments only against the charge framed under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (`the Act' for short). Mr.Modi has contended that prosecution has produced the charge-sheet along with the list of 21 witnesses and documentary evidences. According to him, there is no prima facie evidence against the present applicants-original accused to frame charge under the provisions of the Act. He has contended that only evidence available on record is the complaint. Reading the said complaint, he has contended that mentioning of the word `Adi' (Adivasi) in the cause title of the complaint after the name of the complainant does not mean that charge can be framed under the provisions of the Act. He has argued that no certificate to that effect has been produced by the prosecution along with the charge-sheet and, therefore, charge framed by the court below under that title is not tenable.

3.1 Mr.Modi has relied upon the following reported cases:

i) 28(3) G.L.R. page 2568
ii) 1998 Cri. Law Journal 543
iii) 1992 Cri. Law Journal 3054.
iv) 1995 Cri. Law Journal 3060.
v) 1996 Cri. Law Journal 3566.
vi) 1997 Cri. Law Journal, 2036.
vii) AIR 1977 Supreme Court 1489
viii) AIR 1979 Supreme Court 366
ix) 1981 Bombay Law Reported 553
x) AIR 1990 Supreme Court 1962

xi) 1999 Supreme Court Cases (Criminal) 373

3.2 He has drawn my attention towards the judgment reported in 28(3) G.L.R. page 2568 wherein this High Court has held in para 12 as under:

> "However, in absence of the material that the offence has been committed on the ground of the victim being a member of Schedule Caste, the conviction under the said provision of the Act cannot be sustained".

The above judgment was rendered in an appeal where there was no evidence on record to prove that the complainant is the person of the Scheduled Caste and, therefore, order of conviction was set aside by the Court. Whereas in this case, charge has been framed by the Court based on the charge-sheet and yet, trial has not begun and, therefore, it is too early to say that no charge can be framed against the applicants-accused under the said Act.

3.3 He has also drawn my attention towards the judgments reported in 1998 Criminal Law Journal 543 as well as 1992 Criminal Law Journal 3054. I am in agreement with the principles laid down by the Karnataka and Madhya Pradesh High Courts in the above reported judgments. The facts as stated in the former judgment are that incident in question has taken place in the chamber of the accused where accused and complainant were only present and there was no public view and, therefore, Karnataka High Court has held that there was no disclosure in the complaint that occurrence had taken place in public view. Similar is the facts in the later reported judgment. Whereas in the present case, the incident has taken place in public view, i.e. in open field and, therefore, present applicants will not be entitled for the benefit out of the above judgment.

3.4 Another judgment relied upon by the learned counsel for the applicants is of the Madhya Pradesh High Court, reported in 1995 Cri. Law Journal 3060. He has relied upon para 3 of that judgment wherein the words "idiot and nonsense" purportedly used by the accused against the complainant in the complaint before the Court have been discussed and interpreted by the Madhya Pradesh High Court. In this case, complainant and others have come out with the case that accused have abused them and, therefore, it is a matter of evidence and, therefore, the applicants will not be entitled to get benefit out of the above judgment.

3.5 He has also drawn my attention towards para 17 of the case reported in 1996 Criminal Law Journal 3566. The Division Bench of Kerala High Court has held in para 17 as under:

"It is not enough if the victim is a member of a Scheduled Caste or a Scheduled Tribe. The offence must have been committed because the victim is a member of a Scheduled Caste or a Scheduled Tribe. The cause for the offence must contain an element of racial prejudice."

There cannot be any dispute regarding the law laid down by the Kerala High Court in the above reported judgment and at the cost of repetition, I would like to say that this judgment has been delivered by a Division Bench of the Kerala High Court in an appeal after verifying each and every evidence on record including the cross-examination in detail. Here in this case, only charge has been framed against the accused on the basis of the charge-sheet. Therefore, the petitioners will not be entitled to the benefit out of the above judgments also.

3.6 Mr.Modi has also relied upon another judgment reported in 1997 Cri.Law Journal, 2036. In this reported judgment, complainant has filed the complaint against a Member of Legislative Assembly and another person who, according to the complainant, uttered some abusive words against the complainant in a public meeting specifically mentioning the caste of the complainant where the complainant was not present. In the present case, the facts are entirely different and, therefore, applicants will not be entitled to the benefit out of this judgment also.

4. In view of the above discussed evidence, I am of the opinion that the judgments on which reliance has been placed by the learned counsel for the applicants will not be helpful to the applicants of this case as discussed earlier. What is required to be seen at the time of framing the charge is the charge-sheet and the papers forming part of it.

5. Learned counsel for the original complainant, Mr.Unwala for Mr.P.K.Jani has drawn my attention towards a case reported in 1996 Criminal Law Journal 2448 and more particularly at head note (B) which runs as under:

"Criminal P.C. (2 of 1974), Ss. 228, 240, 245
Framing of charge--Prima facie case--When made

out--There must exist ground for presuming that accused has committed the offence.

Words and Phrases--Word "presume"--Means probable consequence."

6. The Apex Court in the above reported case has categorically observed what is required to be seen at the time of framing of the charge. Relying upon the above observation of the Apex Court, I have gone through the charge-sheet and the papers annexed with it which have been shown to me by the learned counsel for the respective parties and more particularly the complaint and the panchnama of scene of offence along with other documentary evidences namely, medical certificate, recovery panchnama, inquest panchnama, etc. In my opinion, the evidence on record are sufficient to frame charge against the present applicants-original accused under the Act and Court below has rightly framed it and I do not want to interfere with the same. Under the circumstances, the applicants cannot be discharged or charge cannot be altered as argued by the learned advocate for the applicants. This Criminal Revision Application is, therefore, required to be rejected.

7. This Criminal Revision Application is rejected. Notice is discharged. Interim relief stands vacated.

8. Learned counsel for the applicants has requested for staying of the judgment for a period of eight weeks. This matter is going on in the High Court from August, 1999 onwards after granting of interim relief as a result of which, serious trial has been stayed by this High Court and could not be proceeded further. Hence, I do not think it fit to accept the said request made by the learned counsel for the applicants. The request is, therefore, rejected.

(R.P.DHOLAKIA,J.)
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